CF0000058702

(02)

CRA 539/93

9-11-92 सत्र न्या. I

Division Bench (Criminal)

/- APPEAL OF PRISONER -/

No. 3221 Name मल्ला मुरिया

Father's Name धुरु Residence ग्राम - ओलेर थाना -

Age 45 Sentenced to आजीवन कारावास on

24-8-92 Under Section 302 I.P.C. by II अति. सत्र न्यायाधीश जगदलपुर

S.T. No. 316/91

It is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear with in seven days he may be heard at all if the prisoner states that he does not wish to be represented by legal practioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1. Date of application for copy of Judgement :- No.
2. Date of which copy received :- 24.8-92
3. Date on which Appeal sent :- 15-9-92
4. Whether the prisoner wished to be represented or not. ~~Yes/No~~

No. 3221 Name मल्ला S/o धुरु

Continued in 30/8/91 to 24/8/92 Jail जगदलपुर कस्तर

No. 178 / जगदलपुर / 92 Dated 15/9/92

Forwarded to the CHIEF JUDICIAL MAGISTRATE Jagdalpur together with a copy of judgement or order passed in the case for favour of transmission to the proper Appliate Court.

Superintendent-Central Jail, Sub-Jail 15/9/92

Date of receipt in C.J.M's Office.

Date of receipt of record to accompany.

Memo of Appeal of the Appelliate Court.

No. 20/92 Dated 16/9/92

Forwarded to the Session Judge Jagdalpur

C.J.Magistrate CHIEF JUDICIAL MAGISTRATE JAGDALPUR

Date of receipt in Appliate Court

(5)

(16)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 539/1993

Malla Muria

Vs.

State of Madhya Pradesh (Now Chhattisgarh)

Coram :- **Hon'ble Shri Fakhruddin &**
Hon'ble Shri Dilip Raosaheb Deshmukh, JJ.

JUDGMENT

(19)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 539/1993

Malla Muria

Vs.

State of Madhya Pradesh (Now Chhattisgarh)

Coram :- **Hon'ble Shri Fakhruddin &**
Hon'ble Shri Dilip Raosaheb Deshmukh, JJ.

Present :- Shri Akhil Mishra, Counsel for the appellant.
Shri U.N.S.Deo, Govt. Advocate/Additional Public Prosecutor with M.P.S.Bhatia, Panel Lawyer for the State.

JUDGMENT
(Delivered on 29-09-2005)

Per Dilip Raosaheb Deshmukh, J.

1. This appeal is directed against the Judgment dated 24-08-1992 delivered by Shri T.C. Yadu, First Additional Sessions Judge, Bastar at Jagdalpur in Sessions Trial No. 316/1991 whereby the appellant was convicted for the offence punishable under section-302 of I.P.C. for committing murder of his wife Mangli on 25-08-1991 and was sentenced to imprisonment for life.

2. Briefly stated the prosecution story is that on 25-08-1991 the appellant returned home from his field at about 12 noon and asked for food from his wife Mangli. Mangli told him that since she was not feeling well, she did not prepare the food. This annoyed the appellant. The appellant assaulted Mangli by a club several times on the head and the chest. Mangli succumbed to the injuries on the spot.

(18)

3. Soma PW-2 younger brother of the appellant, lodged the First information report in Police Station-Sukma on 26-08-1991 at about 9 P.M. vide Ex.P-1. Kushal Singh Chauhan, Head Constable PW-4 reached the spot and prepared inquest videEx.P-5. The dead body of Mangli was sent for postmortem. Dr. Devendra Krishan PW-6 conducted the postmortem and found that there was a contusion on right parieto occipital region 3" x 2" in size semi-circular in size, shape and margin. There was reddishness on the left side of chest. Upon internal examination, he found that 3rd & 4th ribs of left side of chest were fractured. There was an effusion of blood on the surface of the brain. He opined that the injuries were ante mortem and cause of death was due to head injury and shock. Death was homicidal in nature. One club was seized Vide Ex.P-3 on the memorandum of the appellant Ex.P-2. After completion of investigation, the appellant was prosecuted under section-302 of the I.P.C.

4. The appellant abjured the guilt. The prosecution examined as many as 6 witnesses. The Trial Judge relying upon the evidence of Raju Muria PW-1, Soma PW-2, Raghuram PW-3 relating to extra judicial confession made by the appellant in Panchayat and the evidence of Dr. Devendra Krishan PW-6 convicted the accused-appellant under section-302 of the I.P.C. for committing murder of Mangli.

5. Shri Akhil Mishra, learned counsel appearing on behalf of the accused-appellant contended that the evidence led by the prosecution relating to extra judicial confession made by the appellant is not reliable. He has also argued in the alternative that the appellant did not have the motive to kill Mangli. Since the appellant was hungry and Mangli had not prepared the food for him, the appellant had

(19)

upon a sudden annoyance inflicted the injuries on Mangli. He also contended that considering the nature of injuries sustained by Mangli, in the facts and circumstances of the case the appellant could, at the most be found guilty for an offence under section-304 Part-II of the I.P.C., since the requisite intention to cause death of Mangli was lacking. On the other hand, learned counsel for the State Shri U.N.S.Deo argued in support of the impugned judgment.

6. We have heard the rival contentions and also gone through the record of Sessions Trial No. 316/1991. As held in ***Gura Singh Vs. State of Rajsthan*** **(2001) 2 SCC-205** extra judicial confession, if voluntary, being not obtained by coercion, inducement or promise of favour can form sole basis for conviction. Applying the law laid down by the Hon'ble Apex Court to the facts of the present case we find that Raju Muria PW-1, Soma PW-2, Raghuram PW-3 have testified that in the Panchayat held on the same day, the appellant had made an extra judicial confession and stated that he had killed Mangli by assaulting her by a Club since she did not give him food on being asked and said that she had not prepared the food. We have gone through the evidence of the abovementioned witnesses and find that it is consistent, reliable and inspires confidence. There is nothing in cross-examination to infer that the extra-judicial confession made by the appellant was not voluntary or was obtained by coercion, inducement or promise of favour. Dr. Devendra Krishan PW-6 has proved the injuries sustained by Mangli mentioned by us in paragraph 3 supra. So far as the head injury sustained by Mangli is concerned there was no fracture underneath. Mangli had sustained fracture of 3rd & 4th rib on the left side of chest. It appears that the appellant who had

(20)

returned after working from the field in the afternoon was hungry and suddenly got annoyed when Mangli told him that due to illness she had not prepared food for him and inflicted the abovementioned injuries on Mangli. Considering the facts and circumstances of the case, the manner in and body parts on which the injuries were caused by the appellant, we are of the considered opinion that the requisite intention for causing the death of Mangli could not be attributed to the appellant in this case, though the requisite knowledge that by causing the abovementioned injuries the appellant was likely to cause the death of Mangli could be attributed to the appellant. Considering the evidence led by the prosecution in its entirety and taking a dispassionate view we are of the considered opinion that offence committed by the appellant does not travel beyond section-304 part-II of the I.P.C.

7. In the result, the appeal is partly allowed. The appellant is acquitted of the charge under section-302 of the I.P.C. and is instead convicted under section-304 Part-II of the I.P.C. and sentenced to Rigorous imprisonment for 10 years. The appellant is in jail since 29-08-1991 i.e. for a period over 14 years. Since the appellant has undergone the sentence awarded, we direct that the appellant shall be set at liberty forthwith, if not required in any other case.

8. In the end, we appreciate the valuable assistance rendered by Shri Akhil Mishra appearing on behalf of the accused appellant under legal aid.

Sd/-
Fakhruddin
Judge

Sd/-
Dilip Raosaheb Deshmukh
Judge
29-09-2005